IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3623 of 2004

Date of Decision : 2.4.2004

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UNION OF INDIA

Versus

SANJAYKUMAR AGARWAL ASSISTANT STATION MASTER

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Coram :

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice.

The Hon'ble Mr. Justice H.K. Rathod, Judge.

Whether approved for reporting ?

Appearance:
1. Special Civil Application No. 3623 of 2004
MRS VASAVDATTA BHATT for Petitioner No. 1-4
..... for Respondent No. 1

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Per : Hon'ble Mr. Justice H.K.Rathod, J.

In this petition, the petitioners, Union of India and others, have challenged the decision of the Central Administrative Tribunal, Ahmedabad Bench, passed in OA No. 538 of 1998 dated June 30, 2003. The Tribunal allowed the OA and quashed and set aside the charge sheet, enquiry and penalty order confirmed by the appellate authority.

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Whether reporters of Local Papers may be allowed to see the judgment ?

The Tribunal directed to reinstate the respondent Sanjaykumar Agarwal in service with all consequential benefits treating the applicant as continuing in service.

2. Brief facts of the petition are as under:

Respondent was working as a Assistant Station Master at Kosamba. He was served with a charge sheet dated April 2, 1996 on the ground that while working as Assistant Station Master, Kosamba on February 2, 1996, he had failed to check the correct seat of point No. A-9 before delivering T-87/3 to the driver of 2951 Down which had resulted into a serious irregularity of averted collusion as the Train 2951 Down had entered in the west goods loop which was already accepted by Down Goods Train No. CC/ADI. Then, the departmental enquiry had commenced in accordance with the principles of natural justice and order of removal from service was passed against the respondent on June 4, 1997. In appeal, the appellate authority confirmed the order of punishment. Then, the respondent had approached the Central Administrative Tribunal by filing ORIGINAL APPLICATION No. 538 of 1998.

Petitioner Union of India raised contention that the Divisional Safety Officer (DSO) is the disciplinary authority of the respondent and he was authorized to issue charge sheet. Circular dated August 14, 1997 is not applicable in the present case as the said Circular is issued much after the issuance of the charge sheet dated April 2, 1996. Departmental enquiry was conducted against the respondent in accordance with the principles of natural justice. If there was any fault or defect in the charge sheet or the departmental enquiry, the Tribunal ought to have remanded the matter back to the disciplinary authority. The DSO and DOM are one and in equal rank. The decision taken from the said authority is correct and cannot be set aside on this ground. As per letter No. E/308/Q dated June 20, 1969 GM(E)(CCG), there is no bar of disciplinary authority being a Member of Fact Finding, therefore, according to the petitioner, the Tribunal has committed an error and the conclusion is erroneous. Except these submissions, no other submissions have been made by the Counsel for the petitioner.

We have considered the submissions made by the Counsel. We have perused the decision of the Tribunal. From bare perusal, there are undisputed facts between the

parties at the relevant time when the respondent was serving as Assistant Station Master at Kosamba. On account of the incident of wrong setting of points, an accident in the nature of collision between two trains was averted due to the precautions taken by the Driver of two trains. Preliminary enquiry was held against the respondent. Charge sheet dated April 2, 1996 was served to the respondent levelling imputations of carelessness and negligent working and misconducting himself. Contention was raised by the respondent before the Tribunal that the officer of the operating department could have served the charge sheet on him or could have acted as a disciplinary authority for the enquiry to be held against him. The DSO belongs to Safety Organization and not to the Operating Department. Therefore, DSO was not competent to issue the charge sheet and to act as a disciplinary authority. Said contention was raised by the respondent before the appellate authority but not considered by the appellate authority. The appellate authority was directed by the Tribunal in ORIGINAL APPLICATION NO. 101 of 1998 to dispose of the appeal and to consider the request for giving personal hearing to the respondent. The appellate authority had not thought it fit to give any personal hearing to the respondent. The appellate authority passed the following orders.

> "Seen the papers. The employee's action do not confirm to the provisions of abnormal working. The onus cannot be shifted to switchman. I agree with the entire observations of DSO. Maintain status quo i.e., the order of DSO stands good."

The appellate authority has not examined the main contention raised by the respondent that the DSO is not competent to act as a disciplinary authority. It is the duty of the appellate authority, as decided by the apex court in RP Bhatt v/s. UOI [AIR 1986 SC 1040], to consider three requirements (1) whether the procedure is complied with ? (2) whether the findings are based on evidence and (3) whether the penalty is adequate. An order which does not disclose consideration of all these elements is illegal. Order must indicate due application of mind. Thus, according to the Tribunal, the appellate authority had shown negligence of duty, carelessness and negligence in deciding the appeal, without application of mind.

The question of competence of the DSO to act as a disciplinary authority for the respondent who belonged to the Operating Department has been examined by the Tribunal. Tribunal considered the Circular of the

Railway Board dated August 14, 1997. Paragraph 3 of the said Circular is relevant, which reads as under:

"After taking into account all the relevant aspects of this issue, including orders of the Hon'ble Supreme Court in the SLPs filed before it, Board have decided that henceforth, only DOMs/BOMs will exercise disciplinary powers in respect of Operating Staff even in matters relating to violation of safety norms. Any practice contrary to the above that may be in force on the Zonal Railways, may be discontinued forthwith. "

Apex Court deprecated the practice of DSO acting as a disciplinary authority and whole departmental enquiry conducted by the DSO was void ab initio, therefore, enquiry has been declared vitiated and set aside on this ground.

Tribunal has considered the fact that DSO was a Member of the Fact Finding enquiry prior to the service of the charge sheet on the respondent and as such, the DSO could not have acted as a disciplinary authority. Circular of the Railway Board dated December 23, 1968 reads as under:

" A point has been raised whether an authority who has functioned or as a Member of Chairman of the fact finding/accident inquiry committee can function as a disciplinary authority for the purpose of considering the explanation to the charge sheet, ordering a departmental inquiry, holding a departmental inquiry itself or imposing the penalty within its own powers. The matter has been considered in consultation with the Ministry of Law and it has been held that if an officer while functioning as Chairman or Member of the fact finding committee had already come to a conclusion and made recommendations that a particular Railway servant is guilty, it would be difficult to expect him to approach the case with an open mind. Even more, the Railway servant would apprehend that the officer having expressed an earlier opinion would not as a disciplinary authority depart from his own earlier findings and as such, he may have a reasonable apprehension that he would not act a fair hearing. It would, therefore, not to be correct for an authority who has already come to a conclusion regarding the guilt of an employee as a disciplinary authority when there is a

likelihood of major penalties being imposed."

It was not in dispute between the parties that the DSO was one of the members of the Fact Finding Committee or the Preliminary Enquiry Committee which inquired into the incident, therefore, in view of this Circular, the DSO could not have acted as a disciplinary authority of the respondent and also not competent to issue the charge sheet as well as to pass punishment order. Therefore, relying upon the above referred Circular, the Tribunal set aside the charge sheet, enquiry and punishment imposed by the DSO who was one of the members of the Fact Finding Committee or the Preliminary Enquiry Committee which inquired into the incident. Enquiry was ordered by incompetent person and subsequent acts also by incompetent and unauthorized person and as such, are bad in law.

Contention of the petitioner was that the inquiry proceedings were initiated prior to the Circular dated August 4, 1997 and the same cannot be made applicable to the facts of the case. This contention of the petitioner was rightly rejected by the Tribunal because there was no Circular permitting the DSO to act as a disciplinary authority for Operating Staff, appeal was decided in the year 1998. Appeal is a continuation of the original proceedings and as such, it does not lie in the mouth of the respondents to say that whatever transpired was before the date of the issuance of the Circular and as such, the same cannot be said to have been vitiated. The Tribunal also relied upon the decision of Ernakulam Bench. In U. Narayana Vs. Chief Operating Manager and others [2003 (2) All India Service Law Journal 37]. In the said decision, the Tribunal also considered the Circular of the Railway Board bearing No. 82 of 1997 dated August 4, 1997 and observed that the appellate authority lost sight of this aspect. Similarly, in the facts of this case also, the appellate authority has lost sight of this Circular. Ultimately, Tribunal has come to the conclusion that the enquiry was ordered by an incompetent person and the disciplinary authority as well as the appellate authority were not competent to act as a disciplinary authority or appellate authority for the operating staff namely respondent and as a result thereto, Original Application was allowed.

Counsel for the petitioner is not able to satisfy us as to how the Tribunal has committed any error and how the findings given by the tribunal are wrong. Counsel for the petitioner is also not able to justify before us that the DSO is the competent authority and these two Circulars are not applicable to the facts of the case.

Observations and findings of the Tribunal are very clear. Two questions arose for determination namely (1) DSO was not competent authority for the respondent and (2) DSO being one of the member of the Fact Finding Committee or the Preliminary Inquiry, not competent to issue charge sheet and to conduct the departmental inquiry and to pass order of punishment. Two Circulars dated December 23, 1968 and August 4, 1997 are clear answer to this issue which is based on undisputed facts between the parties. Counsel for the petitioner has also not disputed this aspect before us about the undisputed facts recorded by the Tribunal. Therefore, according to our opinion, the Tribunal has rightly examined both the contentions raised by the respondent; rightly relied upon two circulars issued by the Railway Board and in such circumstances, the Tribunal has rightly granted proper relief in favour of the respondent. For that, there is no error committed by the Tribunal and the conclusion of the tribunal is not found erroneous. Therefore, the contentions raised by the Counsel for the petitioner are rejected. We are in agreement with the findings given by the Tribunal. Therefore, there is no substance in this petition. Petition is dismissed accordingly.

[ BHAWANI SINGH ]
CHIEF JUSTICE

[ H.K.RATHOD ]
JUDGE

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